No. 84-310

In The

Supreme Court of the United States

October Term, 1984

IN THE MATTER OF ATTORNEY
ROBERT J. SNYDER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF OF PETITIONER

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REPLY BRIEF

The responsive brief submitted by the Eighth Circuit raises an additional issue which petitioner believes demands a response. Accordng to the Eighth Circuit, petitioner's failure to submit sufficient documentation of the services rendered in *United States v. Warren* constituted refusal "to comply with regulations concerning the payment of attorney fees and reimbursement of expenses under the Criminal Justice Act." Appellee's Brief at 6. Throughout appellee's brief, the Eighth Circuit insists that petitioner refused "to comply with the law." *Id.* at 7, 10, 12, 13, 14. The Eighth Circuit fails, however, to quote the provisions of the Criminal Justice Act, or the guidelines used to administer it, that Snyder allegedly refused to obey. There is a simple reason for this failure: Except for one minor matter not at issue,[1] Snyder complied with the Criminal Justice Act and its guidelines. Indeed, in the final request for documentation sent to Snyder, the Eighth Circuit administrative secretary admitted that the

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1. Where a request is above the maximum dollar amount, counsel is required by the guidelines to submit with the voucher "a memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation." Guidelines for the Administration of the Criminal Justice Act § 2.22(B) (1). (J.A. 100-02). This memorandum is not required when counsel does not request excess fees. *Id.* at § 2.22(A). (J.A. 99-100).

The administrative secretary initially requested the excess fee memorandum. Later, however, she dropped this request, apparently because Judge Van Sickle's letter was considered sufficient support for the excess payment. In any event, Snyder was not suspended for failing to submit this memorandum; nor was it ever an issue after the administrative secretary received Snyder's computer records. Moreover, Snyder was later refused the excess fees.

documentation was sufficient; it merely was not in the form that she desired. (J.A. 13).

At the time in question, 18 U.S.C. § 3006A (J.A. 97-99) provided that attorneys appointed pursuant to the Criminal Justice Act were to be compensated at a rate not exceeding $30 per hour for in-court time and $20 per hour for out-of-court time. *Id.* at subd. (d) (1). The provision that describes the materials to be submitted by counsel reads as follows:

> Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred . . . .

Id. at subd. (d) (4). (J.A. 99). Snyder complied with this requirement through the CJA Form 20 (J.A. 1).[2] A question arose, however, as to the exact form of the supporting documentation.

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2. In situations where counsel has not provided a breakdown of the in-court/out-of-court hours, the court has the option of refusing to apply the higher rate. Should an attorney decide submission of a breakdown is not worth the trouble, that is his or her perogative. Section 3006A(d) (4) (J.A. 99) does not *require* a breakdown of the in-court/out-of-court hours. All that is required is a specification of "the time expended, services rendered, and expenses incurred. . . ." While it is true that the attorney has the burden of demonstrating which portions of his bill deserve reimbursement at the higher in-court rate, it is also true that should counsel fail to carry that burden, the court need only apply the lower rate.

Nor do the guidelines for implementation of the Criminal Justice Act require a breakdown of in-court/out-of-court hours. A review of the guidelines, including the portions cited by appellees (see Appellee's Brief at 1), demonstrates that there is no *requirement* placed upon attorneys to submit an in-court/out-of-court breakdown. Nonetheless, attorneys submit this breakdown as part of the CJA Form 20.

Snyder's computer system, which has since been replaced, included various billing codes. The billing codes included a $20 per hour rate, but not a $30 per hour rate. Snyder therefore listed all CJA work on his computer at the $20 rate, and noted on the computer readout whether the work entailed in-court or out-of-court time. Upon completion of his work for his client, Snyder went through his computer sheets (J.A. 4-12), totaled the time expended for in-court time, and increased the total bill to reflect these hours. Snyder reflected this increase on the CJA Form 20 he submitted to the Eighth Circuit. (J.A. 1). Thus, the CJA Form 20 included a breakdown of in-court/out-of-court hours.

The Eighth Circuit administrative secretary returned the form, requesting documentation supporting the request and a memorandum supporting the claim. Snyder responded by submitting his computer sheets, which necessarily reflected billing at the out-of-court rate. The administrative secretary may have been confused by the difference between the computer sheets and the CJA voucher. She returned Snyder's documentation, requesting that he modify the computer sheets to reflect the hours expended, stating that "I suppose we could figure it out by doing the division, but we don't have that kind of time . . . ." (J.A. 13). She apparently did not wish to take the time to make the computations. Thus, the necessary documentation was submitted; it just was not in the exact form that the Eighth Circuit administrative secretary preferred. In response, Snyder wrote the letter which is at issue in this case.

Snyder did not violate any law or guideline by failing to submit further documentation of the in-court/out-

of-court time expended. Except for one minor matter not at issue (*see supra* note 1), Snyder complied fully with the Criminal Justice Act and the guidelines used to administer it. The request by the administrative sectary dated September 26, 1983 (J.A. 13) was merely a matter of administrative convenience, and not a matter of compliance with the Criminal Justice Act or its guidelines.

Nor is it appropriate to construe a request from an administrative secretary for further documentation as an order from the Eighth Circuit. Appellee provides no authority for this proposition, and petitioner is aware of none.

Lastly, Snyder objects to the Eighth Circuit's attempt to circumvent the real reason for Snyder's suspension: the content of his letter and his refusal to apologize for it.[3] As is demonstrated by the above discussion, Snyder

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3. It is interesting to note how the Eighth Circuit has repeatedly changed the reason for Snyder's suspension. According to the show cause order, Snyder was subject to suspension for refusing to serve on the CJA panel. (J.A. 22). Once the court realized during the show cause hearing that the North Dakota plan was based on voluntary service, the court focused on Snyder's compliance with the CJA guidelines (and asserted that Snyder nonetheless had an obligation to provide *pro bono* services). (J.A. 32). The court also requested an apology from Snyder. See J.A. 40, 41, 43, 45, 50 (hearing). Once Snyder complied with the first two requirements, the court focused on the request for an apology. J.A. 52-53 (letter from Judge Lay to Snyder). When Snyder refused to apologize, the Eighth Circuit panel suspended him explicitly for that refusal, 734 F.2d at 337 (J.A. 59-60), and the court en banc conditionally vacated the panel's order of suspension and provided Snyder an additional ten days "to provide a sincere letter of apology to this Court for the disrespectful comments directed to the Court in his letter of October 6, 1983, sent to Judge Van Sickle's secretary." 734 F.2d at 344 (J.A. 95). In its brief, the court now "champions" Snyder's First Amendment rights (Appellee's

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did not violate the law. But even if he had refused "to comply with the law" or the "regulations concerning the payment of attorney fees and reimbursement of expenses under the Criminal Justice Act," his suspension was not based on that issue. At stated in Snyder's initial brief to this Court, "Snyder was suspended because of the 'disrespectful' nature of his remarks and because of his refusal to apologize for them." Petitioner's Brief at 19-20 (footnote deleted). This fact is made absolutely clear not only by the first opinion issued by the Eighth Circuit,[4] but also through the letters sent by Judge Lay prior to the issuance of the panel opinion[5] and the statements of the panel at

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Brief at 6) and argues that Snyder was not suspended for his refusal to apologize, but for his failure to "comply with the law." Once again, the Eighth Circuit has changed its reasoning.

4. *See* 734 F.2d at 337 (J.A. 59-60):

> As we will discuss, Snyder now conditionally has offered to serve in indigent cases and to comply with the CJA guidelines. However, in a letter to the court he has otherwise refused to retract or apologize for his disrespectful remarks to the court. . . .
>
> We find Snyder's present statement that he will conditionally comply with the guidelines not enough. His refusal to show continuing respect for the court and his refusal to demonstrate a sincere retraction of his admittedly "harsh" statements are sufficient to demonstrate to the court that he is not presently fit to practice law in the federal courts. . . .

5. *See* J.A. 18-19 and J.A. 52-53. In his November 15, 1983, letter to Judge Van Sickle, Judge Lay stated as follows:

> At this point, I feel that if Mr. Snyder wishes to write the court offering his apology to the court for his disrespectful comments, and assuring the court that he will in the future be willing to comply with the requirements of the CJA guidelines, I will then be willing to recommend to the

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the hearing on April 16, 1984.[6] The letters and the statements make it obvious that all the Eighth Circuit desired was an apology, and that if Snyder had apologized he would not have been suspended. This fact is confirmed by the *en banc* decision, where the full Court conditionally vacated the panel's order of suspension and provided Snyder an additional ten days "to provide a sincere letter of apology to this Court for the disrespectful comments directed to the Court in his letter of Oct. 6, 1983, sent to Judge Van Sickle's secretary" 734 F.2d at 344 (J.A. 95).

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court that the order to show cause not be filed and, as a result, become public record.

J.A. 19. Following the show cause hearing and receipt of Snyder's letter agreeing to the other two items, Judge Lay wrote directly to Snyder, stating that

> [t]he court expressly asked if you would be willing to apologize for the tone of the letter and the disrespect displayed. . . . Before circulating your letter of February 23, I would appreciate your response to Judge Arnold's specific request, and the court's request for you to apologize for the letter that you wrote. . . . I am confident that if such a letter is forthcoming that the court will dissolve the order.

J.A. 53.

6. *See, e.g.*, J.A. 40, 41, 43, 45, 50. This point is best shown at J.A. 43:

> I've given you every opportunity to simply apologize to the court and to indicate that you will continue with your criminal law obligations. That's all I asked Judge Van Sickle to ask you. You refuse to do that. In the order to show cause, which is very simply and succinctly stated, I gave you every opportunity to purge—you wouldn't even have had to bother to the extents of coming down here—by simply writing to the court and saying "yes, you would continue to serve in pro bono obligations when asked and that you will continue to comply with the guidelines." That's all you have to do.

Snyder's letter of February 22, 1984, takes care of the court's concerns, except for the apology. (J.A. 51-52).

Respectfully submitted,

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